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09/224,477	12/31/1998	ROBERT C. DIXON	239/104	3646

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EXAMINER

MOORE, JAMES K

ART UNIT	PAPER NUMBER
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2686

24

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/224,477

Applicant(s)

DIXON, ROBERT C.

Examiner

James K Moore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 22-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 1998 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 22-33 and 46-48 have been considered but are moot in view of the new ground(s) of rejection.
2. Applicant's arguments with respect to claims 34-45 have been fully considered but they are not persuasive.

In regards to the 35 U.S.C. 112, 1<sup>st</sup> paragraph rejection of claims 34-45, the applicant argues that "given the state of the art in 1998, a person of average skill in the art would appreciate that the present invention **could well be implemented** by adapting current 1998 hardware systems." See page 9 of applicant's Office Action response.

MPEP 2163(II)(A)(3)(b) provides:

To comply with the written description requirement of 35 U.S.C. 112, para. 1, or to be entitled to an earlier priority date or filing date under 35 U.S.C. 119, 120, or 365(c), each claim limitation must be expressly, implicitly, or inherently supported in the originally filed disclosure. When an explicit limitation in a claim "is not present in the written description whose benefit is sought it must be shown that a person of ordinary skill would have understood, at the time the patent application was filed, that the description **requires** that limitation." *Hyatt v. Boone*, 146 F.3d 1348, 1353, 47 USPQ2d 1128, 1131 (Fed. Cir. 1998).

The applicant has not met the burden of showing that a person of ordinary skill would have understood, in 1991 (the priority date), that the description requires "a storage medium having stored thereon instructions." Therefore, the rejection stands.

The examiner also notes that the applicant has not addressed the 35 U.S.C. 112, 1<sup>st</sup> paragraph rejection of claim 47.

***Claim Rejections - 35 USC § 112***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 28-30, 34-45 and 47 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 28 includes the limitations "dynamically determining a first frequency in closest use to the first cell by a second cell in a second system, separate and apart from the system of the first cell", "selecting a second frequency different from the first frequency", and "dynamically assigning the second frequency for use in the first cell." The specification does not provide support for a method including these steps in combination with the dynamic code assignment steps of independent claim 22.

Claims 34 and 40 are directed to an "article comprising a storage medium having stored thereon instructions." The specification does not describe an article comprising a storage medium that stores instructions.

Claims 35-39 depend on claim 34, and claims 41-45 depend on claim 40.

Claim 47 includes the limitation "wherein the control station further assigns the first frequency to a third cell, wherein the third cell is not adjacent to a cell that utilizes the first frequency." This limitation is not described in the specification.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 22-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Schloemer (U.S. Patent No. 5,206,882).

Regarding claim 22, Schloemer discloses a method which comprises dynamically determining a first code in closest use to a first cell (an old site code), selecting a second code different from the first code (a new code non-correlated to old site codes), and dynamically assigning the second code to be used in the first cell (a new site). See col. 6, lines 13-23 and col. 7, lines 50-59.

Regarding claim 23, Schloemer discloses all of the limitations of claim 22, and also discloses that the second code may be assigned to an additional cell not adjacent to the first cell. See col. 8, lines 1-3.

Regarding claim 24, Schloemer discloses all of the limitations of claim 22, and also discloses that the second code may be assigned to cells in a pattern of cells not adjacent to the first cell. See col. 8, lines 1-3.

7. Claims 31-33, 46 and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by Chuang et al. (U.S. Patent No. 5,212,831).

Regarding claim 31, Chuang discloses a method comprises dynamically determining a first frequency in closest use to a first cell, selecting a second frequency different from the first frequency, and dynamically assigning the second frequency to the first cell. See Figures 1 and 3 and col. 12, lines 8-51.

Regarding claim 32, Chuang discloses all of the limitations of claim 31, and also discloses that a third cell not adjacent to a cell using the first frequency may also assign the first frequency to its cell. See col. 13, lines 15-20.

Regarding claim 33, Chuang discloses all of the limitations of claim 31, and also discloses that the first cell may be in a first system and a cell that uses the first frequency may be in a second system. See col. 13, lines 8-14.

Regarding claim 46, Chuang discloses a control station (port 30, 40, 50, or 70) comprising a receiver and a transmitter. The control station dynamically determines a first frequency in closest use to a first cell, selects a second frequency different from the first frequency, and dynamically assigns the second frequency to the first cell. See Figures 1 and 3 and col. 12, lines 8-51.

Regarding claim 48, Chuang discloses all of the limitations of claim 46, and also discloses that the first cell may be in a first system and a second cell that uses the first frequency may be in a second system. See col. 13, lines 8-14.

***Claim Rejections - 35 USC § 103***

8. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schloemer in view of Chuang et al. (U.S. Patent No. 5,212,831) and Schmidt (U.S. Patent No. 4,765,753).

Regarding claim 25, Schloemer discloses all of the limitations of claim 22, but does not disclose that the method comprises dynamically determining a first frequency in closest use to the first cell, selecting a second frequency different from the first frequency, and dynamically assigning the second frequency to be used in the first cell.

Chuang teaches a method of dynamic channel allocation which comprises dynamically determining a first frequency in closest use to a first cell, selecting a second frequency different from the first frequency, and dynamically assigning the second frequency to be used in the first cell. This method allows a wireless communication system to adapt to changing operational conditions. See Abstract.

Schmidt teaches a method for separating the message channels of adjacent base stations which involves separating both codes and frequencies of adjacent base stations. One of ordinary skill in the art would have understood that this decreases the interference between adjacent cells. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Schloemer with the teachings of Chuang and Schmidt, such that the method also comprises dynamically determining a first frequency in closest use to the first cell, selecting a second frequency different from the first frequency, and dynamically assigning the second frequency to be used in the first

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cell, in order to reduce interference between adjacent cells and to be adaptable to changing operational conditions.

Regarding claim 26, Schloemer in view of Chuang and Schmidt teach all of the limitations of claim 25, and Schmidt also discloses that the second frequency may be assigned to an additional cell not adjacent to the first cell. See col. 2, lines 33-35.

Regarding claim 27, Schloemer in view of Chuang and Schmidt teach all of the limitations of claim 25, and Schmidt also discloses that the second frequency may be assigned to cells in a pattern of cells not adjacent to the first cell. See col. 2, lines 33-35.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ken Moore, whose telephone number is (703) 308-6042. The examiner can normally be reached on Monday-Friday from 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold, can be reached at (703) 305-4379.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 872-9314 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

Ken Moore

12/15/03

*JKM*

*Marsha D Banks-Harold*

MARSHA D. BANKS-HAROLD  
SUPERVISORY PATENT EXAMINER  
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